

Record of Conversation September 15, 2009 10:15 am to 10:30 am (cdt)

Phone call with David Choate, Esq., of Friday Eldridge & Clark, LLP, 400 West Capitol Ave., Ste. 2000, Little Rock, AR 72201, Ph: 501-370-3329, Counsel for Arkansas Economic Development Commission (AEDC)

After speaking with Susan Webster by phone, I returned a call to Mr. Choate who had left a voice mail message yesterday after I left the office.

I indicated that in regard to his questions about status, epaosc.org was a good place to go; and I described the pathway to the Region 6 Sites and NCI in particular with a note about POLREPs. I told him that based on my conversation with Susan that EPA was about to complete its removal action and had only to deal with a tank of sludge remaining on the site. I told him that he could have someone from AEDC call Susan directly if he liked, but I would ask that it not be counsel.

I told Mr. Choate that EPA had no further plans for this facility at this time, but understood that the ADEQ would be inspecting and performing a site assessment of the NCI Site to determine if further measures were warranted. I said that if ADEQ failed for some reason to do that, then the EPA might do the assessment.

I told Mr. Choate that I had seen information indicating that some party might be interested in storing and handling HCL at the site, and I suspected that was the Jones Hamilton Company (JHC), who had engaged in considerable activity at the site during the NCI operations. JHC had loaned NCI a lot of money and had an agreement to receive the HCL by-product from the HFC-134a process. I indicated that HCL was one of JHC's primary products; and based on documents I had seen, apparently JHC had operated some sort of HCL terminal operation at the NCI facility that may have involved HCL from areas other than just NCI.

I told Mr. Choate that EPA had sent JHC a CERCLA 104(e) information request and was looking at them for questions about potential liability, but had made no determinations about that, although it could seek additional information. I indicated that at this time, I had seen nothing that would warrant a determination of potential liability of AEDC. I indicated that if AEDC decided to foreclose, then technically it would be the owner of a facility. However, as he knew as counsel, CERCLA had a number of provisions that permitted certain types of activities to be engaged in by creditors such as AEDC.

I indicated that EPA was concerned about potential future activity at the Site, since the Agency had already performed two removal actions at this facility over a period of years. He thanked me for the information, and we ended the call.

091509 11:16 am - I called back and left David Choate a brief voice-mail message stating that I had forgotten to mention in our earlier call that EPA would very likely be filing a lien on the NCI property. I said there were some bureaucratic guidance procedures we would want to follow first, but we would very likely be filing a CERCLA lien on the site property.